

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
NOV 12 1996
Federal Communications Commission
Office of Secretary

| | | |
|----------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the Local |) | CC Docket No. 96-98 |
| Competition Provisions of the |) | |
| Telecommunications Act of 1996 |) | |
| |) | |
| Interconnection between Local |) | CC Docket 95-185 |
| Exchange Carriers and Commercial |) | |
| Mobile Radio Service Providers |) | |

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF WORLDCOM, INC.
TO OPPOSITIONS TO ITS PETITION FOR CLARIFICATION

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt

WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

(202) 776-1550

November 12, 1996

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION AND SUMMARY | 1 |
| II. | ILEC ARGUMENTS IN OPPOSITION TO WORLDCOM'S PROPOSED TRANSPORT CLARIFICATIONS ARE BASELESS AND WITHOUT MERIT | 4 |
| III. | ILEC OPPOSITION TO WORLDCOM'S REQUEST THAT THE COMMISSION IMPOSE A REPORTING REQUIREMENT REGARDING OSS FUNCTIONS IS ANTICOMPETITIVE AND WITHOUT MERIT | 11 |
| IV. | CONCLUSION | 14 |

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|----------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the Local |) | CC Docket No. 96-98 |
| Competition Provisions of the |) | |
| Telecommunications Act of 1996 |) | |
| |) | |
| Interconnection between Local |) | CC Docket 95-185 |
| Exchange Carriers and Commercial |) | |
| Mobile Radio Service Providers |) | |

**REPLY COMMENTS OF WORLDCOM, INC.
TO OPPOSITIONS TO ITS PETITION FOR CLARIFICATION**

Pursuant to § 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, WorldCom, Inc. ("WorldCom") hereby submits the following reply comments to oppositions to its petition for clarification of the Commission's First Report and Order¹ in the above captioned proceeding.

I. INTRODUCTION AND SUMMARY

In its Petition for Clarification,² WorldCom seeks clarification of the Commission's First Report and Order in two principal areas: (1) the transport options available from incumbent local exchange carriers ("ILECs") as network elements; and (2) reporting requirements for ILEC provision of operations support systems ("OSS").

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, FCC 96-325 (released August 8, 1996) ("First Report and Order").

² Petition for Clarification of WorldCom, Inc., CC Docket No 96-98, filed September 30, 1996 ("WorldCom Petition").

With respect to transport, WorldCom seeks clarification of several issues regarding the appropriate definition of the transport options available as network elements pursuant to section 251(c)(3) of the Telecommunications Act of 1996.³ Specifically, WorldCom asks the Commission to clarify that incumbent local exchange carriers must offer requesting carriers a usage option for: (1) tandem-switched transport between the end office and the serving wire-center ("SWC") based on the airline mileage between those two points; and (2) shared interoffice transport between end offices when there is no tandem routing involved. In its Petition and in its comments in response to another party's petition for reconsideration and clarification,⁴ WorldCom explains in detail that these clarifications are necessary to promote network efficiency and to ensure that new entrants have the same transport routing options available to them as are available to the ILECs. In short, these clarifications are necessary to the development of local exchange competition.

Clearly recognizing the importance of these clarifications to the development of local competition, potential new entrants Sprint, MCI, and CompTel member companies support

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

⁴ See Comments of WorldCom, Inc. on Petitions for Reconsideration and/or Clarification, CC Docket No. 96-98, filed October 31, 1996 ("WorldCom Comments") at 1-6.

WorldCom's proposals with respect to transport.⁵ Conversely, several ILECs or representatives of ILECs, intent on preserving their dominant position in the local marketplace, oppose the WorldCom request for clarification of the transport options.⁶ Not only are these ILEC oppositions baseless and without merit, but they rest upon both distorted characterizations of WorldCom's requested clarifications, and deliberate misinterpretations of plain language in the Commission's First Report and Order and subsequent Order on Reconsideration.⁷ The very nature of the ILEC arguments demonstrates the need for the Commission to clarify its First Report and Order in the manner suggested by WorldCom. Since the ILECs appear to have no compunction about misrepresenting the Commission's orders in a proceeding before the very body that crafted those orders, one can likewise expect

⁵ See Comments of the Competitive Telecommunications Association, CC Docket No. 96-98, filed October 31, 1996 ("CompTel Comments") at 2-4; Opposition of Sprint to Petitions for Reconsideration, CC Docket No. 96-98, filed October 31, 1996 ("Sprint Opposition") at 5-6; and MCI Communications Corporation Response to Petitions for Reconsideration, CC Docket No. 96-98, filed October 31, 1996 ("MCI Response") at 18.

⁶ See Opposition of Ameritech to Petitions for Clarification and Reconsideration filed by Various Parties, CC Docket No. 96-98, filed October 31, 1996 ("Ameritech Opposition") at 6-11; Opposition of Bell Atlantic to Petitions for Reconsideration, CC Docket No. 96-98, filed October 31, 1996 (as amended on November 1, 1996) ("Bell Atlantic Opposition") at 20; Consolidated Opposition of the United States Telephone Association, CC Docket No. 96-98, filed October 31, 1996 ("USTA Opposition") at 16-17.

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394 (released September 27, 1996) ("Order on Reconsideration").

that the ILECs will further misrepresent the Commission's orders in arbitration proceedings before state commissions. A clear statement from the Commission is critical to diminish the possibility of such mischief on the part of the ILECs.

Second, WorldCom urges the Commission to clarify its First Report and Order by imposing a reporting requirement on ILECs for OSS functions. This clarification is necessary to ensure that the Commission and industry have adequate information to monitor and enforce the OSS provisioning requirement, and to maximize the ability of potential new entrants to establish compatible systems quickly. Ameritech and USTA predictably make generalized claims that it would be overly burdensome for ILECs to comply with the minimal reporting requirements suggested by WorldCom.⁸ Again, this ILEC opposition is unfounded and the Commission should adopt the WorldCom clarification so that the FCC can obtain this necessary information.

II. THE ILEC ARGUMENTS IN OPPOSITION TO WORLDCOM'S PROPOSED TRANSPORT CLARIFICATIONS ARE BASELESS AND WITHOUT MERIT

The ILEC arguments in opposition to WorldCom's proposed transport clarifications have no foundation in the 1996 Act or in the Commission's First Report and Order. Instead, the arguments rely only on intentional distortions of WorldCom's requests and blatant misinterpretations of the Commission's orders. The ILEC arguments themselves demonstrate the need for the Commission to

⁸ Ameritech Opposition at 15; USTA Opposition at 28.

clarify the transport options that ILECs must make available to requesting carriers.

Despite the clear discussion in the First Report and Order⁹ and provisions of the Commission's rules,¹⁰ Ameritech and USTA appear to take the incredible and untenable position that ILECs have no duty to provide shared interoffice transport facilities at a usage-based rate to requesting carriers. This attack does not go as much to WorldCom's requested clarifications as it does to the very nature of shared interoffice transmission as a network element. If left unchecked by the Commission, this view will undermine the Commission's efforts to promote local competition. In particular, the Commission must uphold the basic principle that common or shared transport must be made available to new entrants under Section 251(c)(3), just as dedicated transport is made available to more established carriers.

Ameritech asserts that "the Commission clearly intended that unbundled 'shared' interoffice facilities will provide requesting carriers the option of sharing dedicated interoffice facilities by subdividing among them."¹¹ Both Ameritech and USTA suggest that WorldCom really seeks to recreate the common transport aspects of switched access service, which they contend would upset the balance struck between services and network

⁹ First Report and Order at ¶¶ 258, 440.

¹⁰ 47 C.F.R. § 51.319(d); 47 C.F.R. § 51.509(d).

¹¹ Ameritech Opposition at 8 (emphasis added).

elements by the Commission.¹² But common transport is exactly what the Commission had in mind in its discussion of shared transmission facilities. As the Commission stressed while discussing its concept of unbundled network elements, "[c]arriers seeking other elements, especially shared facilities such as common transport, are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."¹³

Moreover, both Ameritech and USTA misconstrue the basic distinction between services and network elements that has been drawn by the Commission. Ameritech and USTA suggest that since usage-based transport is available from access tariffs as a service, usage-based shared interoffice transmission should not be made available as a network element.¹⁴ The Commission addressed that very issue firmly and clearly in the First Report and Order, when it concluded that

[E]xisting tariffs for unbundled transport elements do not satisfy the unbundling requirement of section 251(c), as suggested by Cincinnati Bell, because such tariffs are only for interstate access services, not for unbundled interoffice facilities. As such, existing federal tariffs for transport and special access exclude intrastate transport, and therefore are

¹² Ameritech Opposition at 9; USTA Opposition at 16-17.

¹³ First Report and Order at ¶ 258 (emphasis added). Ironically, Ameritech quotes only from the first portion of this paragraph during its discussion. Evidently, its attorneys did not manage to turn the page to read the complete paragraph.

¹⁴ Ameritech Opposition at 9; USTA Opposition at 16-17. Again, this claim runs to all usage-based shared interoffice transmission options, not just to the options for which WorldCom requests clarification.

not equivalent to unbundled interoffice facilities, which we have determined to be nonjurisdictional in nature.¹⁵

Ameritech and USTA also allege that WorldCom's requested clarifications would violate the Commission's Reconsideration Order regarding the use of the unbundled switching element to provide interexchange access.¹⁶ USTA goes so far as to assert that WorldCom's request is a "transparent bid to evade access charges."¹⁷ These allegations arise from an over-broad reading of the Reconsideration Order and a deliberate effort of the ILECs to obfuscate the issue at hand. First, the issues regarding the use of shared interoffice transport facilities as a network element pursuant to 251(c) of the 1996 Act have nothing to do with avoiding access charges. Instead, these issues have everything to do with providing local exchange service and exchange access service in competition to the ILECs. New entrants will need shared interoffice transport, including the clarifications requested by WorldCom, to provide a wide range of telecommunications services using network elements.

¹⁵ First Report and Order at ¶ 448. Moreover, if the Ameritech and USTA positions were accepted, then dedicated interoffice transmission facilities would likewise not be required as network element transport options since such facilities are also available in access tariffs. Clearly, the Commission's interpretation of 251(c)(3), which avoids this absurd and anticompetitive result, is correct.

¹⁶ Ameritech Opposition at 9; USTA Opposition at 16. Once again, these claims go beyond WorldCom's requested clarifications to the broader question of shared interoffice transport generally.

¹⁷ USTA Opposition at 16.

Second, Ameritech and USTA's assertion that the Commission's Reconsideration Order prohibits the use of unbundled switching elements to originate and terminate interexchange traffic is inapposite and irrelevant.¹⁸ Even if Ameritech and USTA's assertion was correct, WorldCom's Petition concerns the shared interoffice transport facilities options that must be made available as network elements; it is not about unbundled local switching. Section 251(c)(3) and the Commission's First Report and Order are clear: network elements can be used to provide any telecommunications service, including local exchange service and exchange access.¹⁹ There is simply no question that shared interoffice transport facilities, as network elements, can be used to provide any telecommunications service.

Ameritech and USTA, again speaking of shared interoffice transmission facilities in general, allege that usage-based pricing is inconsistent with the way that the ILECs incur cost.²⁰ Again, however, Ameritech's confusion regarding

¹⁸ Moreover, Ameritech and USTA's assertion is vastly overstated. The Reconsideration Order is clear that "a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user." Reconsideration Order at ¶ 11. The only limitation placed on the use of the unbundled switching element is that it may not be used to "provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service." Reconsideration Order at ¶ 13.

¹⁹ First Report and Order at ¶ 356. See also 47 C.F.R. § 51.309.

²⁰ Ameritech Opposition at 10; USTA Opposition at 17.

the nature of shared interoffice transmission facilities is evident as it suggests the "the cost of interoffice transmission facilities is not usage sensitive since facilities or capacity are dedicated to a particular carrier or carriers."²¹ As explained above, the Commission fully contemplated that, with respect to shared interoffice transmission facilities, the requesting carrier would be purchasing the functionalities of the incumbent's facilities on a minute-by-minute basis.²²

Moreover, WorldCom's Petition seeks clarification that the ILECs are required to offer requesting carriers the option of purchasing usage-based shared interoffice transmission from the end-office to the SWC via a tandem switch based on the airline mileage between the end-office and SWC. The consistency of this approach with the Commission's Total Element Long Run Incremental Cost ("TELRIC") pricing standard, demonstrated by both WorldCom and CompTel, has not been challenged.²³ Bell Atlantic wrongly asserts that WorldCom's request represents a "return to the 'equal charge per unit of traffic' rule that the Commission abandoned four years ago."²⁴ Instead, as Sprint correctly points out, WorldCom's request is, in fact, consistent with the

²¹ Ameritech Opposition at 10.

²² First Report and Order at ¶ 258.

²³ WorldCom Petition at 2; CompTel Comments at 2.

²⁴ Bell Atlantic Opposition at 20.

approach taken by the Commission in CC Docket No. 91-213 to replace the "equal charge" rule.²⁵

Aside from the arguments of Ameritech and USTA regarding shared interoffice transmission facilities in general, no party raises any objection to WorldCom's request for the Commission to clarify that ILECs must provide requesting carriers with a usage option for transport between ILEC end-office, without the requirement of tandem-switching.²⁶ As WorldCom's Comments explain in detail,²⁷ this option is critical if new entrants are to enjoy the same transport options as the ILECs. Failure to adopt the WorldCom proposal will significantly and unnecessarily raise the costs to new entrants and will lead to substantial network inefficiencies, not only for the new entrants but for the ILECs as well. Ultimately, competition and the consumer will suffer.

²⁵ Sprint Opposition at 6.

²⁶ NYNEX makes the generalized statement that traditionally ILECs have only provided shared interoffice facilities between their end offices and tandems. NYNEX Comments, CC Docket No. 96-98, filed October 31, 1996 ("NYNEX Comments") at 10. This may be true, but NYNEX and other ILECs have not "traditionally" provided interconnection and network elements pursuant to section 251(c) of the 1996 Act, either. The provision of shared network facilities between end offices without tandem-switching is essential to the development of the local competition contemplated by the Act, regardless of whether the ILECs have traditionally provided such facilities.

²⁷ See WorldCom Comments at 1-6, where WorldCom opposes a request by the Local Exchange Carrier Coalition ("LECC") that the Commission require that shared interoffice transmission facilities be provided only in conjunction with local switching and tandem switching together. This new limitation on competition conjured up by LECC runs directly counter to WorldCom's requested clarification.

WorldCom has demonstrated strong public policy reasons why its clarifications regarding transport options should be adopted by the Commission. As shown above, the ILEC responses in opposition are baseless and without merit. WorldCom respectfully urges the Commission to grant its request for clarification.

III. ILEC OPPOSITION TO WORLDCOM'S REQUEST THAT THE COMMISSION IMPOSE A REPORTING REQUIREMENT REGARDING OSS FUNCTIONS IS ANTICOMPETITIVE AND WITHOUT MERIT

In its petition, WorldCom notes that the First Report and Order directs the ILECs to provide non-discriminatory access to their OSS functions as expeditiously as possible, and in no event later than January 1, 1997. To ensure that the Commission and the industry have adequate information to monitor and enforce the OSS provisioning requirement, and to maximize the ability of new entrants to establish compatible systems quickly, the Commission should impose reporting requirements on the ILECs. These requirements are fully explained in WorldCom's Petition.²⁸

Ameritech and USTA object to WorldCom's request that the Commission require ILECs to file OSS compliance reports.²⁹ Ameritech cites paragraph 311 of the First Report and Order for the proposition that the Commission rejected similar requests for such OSS compliance reporting because "the record is insufficient at this time to adopt such requirements, and we may reexamine

²⁸ WorldCom Petition at 8-9.

²⁹ Ameritech Opposition at 15; USTA Opposition at 28.

this issue in the future."³⁰ But the Commission's finding in paragraph 311 only addresses requests for reporting requirements for the provision of network elements in a nondiscriminatory manner generally. Moreover, Ameritech and USTA somehow miss the Commission's statement in that same paragraph that it expressly "agree[s] with those commenters that argue that incumbent LECs should be required to fulfill some type of reporting requirement."³¹ WorldCom submits that, given the critical nature of OSS provisioning, it is appropriate and imperative for the Commission to adopt OSS compliance reporting provisions now.

USTA alleges, without any substantiation, that the OSS reporting requested by WorldCom would "burden incumbent LECs and Commission resources."³² However, WorldCom's request would require ILECs to file, at most, fourteen reports over a critical three-year period. Surely this de minimis request cannot be so burdensome to the ILECs as to outweigh the valuable, real-world information that will be gained by the Commission and new entrants through the filing of such reports.

The WorldCom Petition also requests that the Commission require the ILECs to accept provisions establishing reasonable performance standards for providing OSS functionality on a timely, nondiscriminatory basis, as part of agreements between

³⁰ Ameritech Opposition at 15, quoting the First Report and Order at ¶ 311.

³¹ First Report and Order at ¶ 311.

³² USTA Opposition at 29.

ILECs and new entrants subject to arbitration by state

commissions.³³ Ameritech and USTA misstate this as a request for the Commission to impose national performance standards for OSS.³⁴ WorldCom's request, correctly characterized, is that the Commission should make clear that the ILECs' duty to negotiate in good faith requires ILECs to accept reasonable performance standards for the provision of OSS functionality. The details of those performance standards would be left to the parties and to the state commissions conducting arbitrations. This Commission clarification would make clear, however, that an ILEC cannot refuse to accept any reasonable performance standards.


³³ WorldCom Petition at 9.

³⁴ Ameritech Opposition at 16; USTA Opposition at 28.

IV. CONCLUSION

For the reasons stated in its Petition for Clarification, in its Comments on Petitions for Reconsideration and Clarification, and above, WorldCom urges the Commission to adopt its suggested clarifications.

Respectively submitted,


Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt

WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

(202) 776-1550

November 12, 1996

CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 12th day of November, 1996, sent a copy of the foregoing "Reply Comments of WorldCom, Inc. on Petitions for Reconsideration and/or Clarification" by hand delivery, or first class mail, postage prepaid, to the following:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

The Honorable James Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

William F. Caton (original and 11 copies)
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

Richard Metzger Jr.
Deputy Bureau Chief, Operations
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

James Schlichting
Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, D.C. 20554

Richard Welch
Chief, Policy Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

International Transcription Service, Inc.
2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

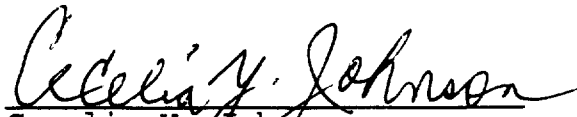
Anthony C. Epstein
Donald B. Verrilli Jr.
Jodie L. Kelley
Jenner and Block
601 13th Street, N.W.
Washington, D.C. 20005

Leon M. Kestenbaum
Jay C. Keithley
Richard Juhnke
1850 M Street, N.W.
Washington, D.C. 20036

Antoinette Cook Bush
Mark C. Del Bianco
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend
US. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

William J. Balcerski
NYNEX Telephone Companies
1111 Westchester Avenue
White Plains, NY 10604


Cecelia Y. Johnson